IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-1-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Second Appeal No.490 of 1993

Mangaiarkarasi Ammal ... Appellant

Vs.

1. The Assistant Accounts Officer,
   Regional Accounting Unit,
   Chingleput Electricity System,
   Tiruvallur.

2. The Junior Engineer,
   Chingleput Electricity System,
   Kilianoor,
   Tiruvallur.

3. The Assistant Divisional Engineer,
   Chingleput Electricity System,
   Thiruninravur.

4. The Superintending Engineer,
   Tamil Nadu Electricity System,
   Kancheepuram. ... Respondents

This second appeal is filed under Section 100 of Code of Civil Procedure, against the decree and judgment dated 31.12.1992 made in A.S.No.18 of 1990 passed by the learned Sub Judge, Tiruvallur, reversing the decree and judgment dated 29.11.1989 made in O.S.No.120 of 1986 by the learned District Munsif, Tiruvallur.

For Appellant : Mr.M.Vaidyanathan
For Respondents : Mr.V.Radhakrishnan

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J U D G M E N T

Appellant herein is the plaintiff in O.S.No.120 of 1986 on the file of District Munsif Court, Tiruvallur, who Challenges the reversing judgment made by the learned Sub Judge, Tiruvallur, in A.S.No.18 of 1990 dated 31.12.1992.

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2. The brief facts culled out from the plaint and written statement are as follows,

(a) The husband of the plaintiff by name Loganatha Mudali obtained service connection No.22 in Kilambakkam Village. Previously he had obtained another service connection No.76 for his bore-well. The said bore-well failed long before 1970 and hence S.C.No.76 was disconnected by the department and the pole and other materials were removed before 1970. The plaintiff was asked to submit a dryness certificate to the department. According to the plaintiff, the department dropped all the claims regarding S.C.No.76 and even if any claim is made that is deemed to be barred by limitation. That being the position, on 28.2.1985, the defendants affixed a notice on plaintiff's door under the Act 29 of 1978 demanding the plaintiff to pay a sum of Rs.4,965.50. It is the contention of the plaintiff that the said demand is illegal, void and barred by limitation. The further case of the plaintiff is that on seeing the notice, the plaintiff informed the defendants in person about the unlawful claim and the matter remained without further proceedings. It is alleged in the plaint that during the first week of March, 1986, the defendants threatened to disconnect S.C.No.22, in respect of which no dues are pending to the department. Defendants also refused to accept the electricity charges for the month of February, 1986. Hence the plaintiff sent Rs.282/- by way of money order. According to the plaintiff, there is no due with regard to S.C.No.22 and for the alleged dues in respect of S.C.No.76, S.C.No.22 should not be disconnected. Hence the suit for permanent injunction.

(b) In the written statement filed on behalf of the defendants it is contended that there are other legal heirs to Loganatha Mudali and as they are not arrayed as parties to the suit, the suit is bad for non-joinder of necessary parties. It is also contended that the plaintiff has no locus-standi to file the suit as she has not transferred the service connection in her name. It is further contended that neither the consumer nor the plaintiff, who claims to be his heir, paid the C.C.Charges, A.M.Charges and B.P.S.Charges totalling to Rs.4,965.50 in spite of several demands. According to the department, as per the Rules, the Board has powers to include the arrears of one service connection to the other live connection and the rules cannot be questioned before any Court, as long as the said rules are set aside by the appropriate Court. The further case of the department is that the said Loganatha Mudali obtained service connection No.200 on 13.12.1960 and the same was renumbered as 76. As he had not paid the C.C.charges of 1,386/- and BPSC Rs.3,579.50, totalling to Rs.4,965.50, the same was included in

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the live Service Connection SC.NO.22, which according to the department is in order. It is also contended that as the Board is empowered to take action under the Revenue Recovery Act, question of limitation does not arise. It is also stated in the written statement that as per the terms and conditions of the Board, the service connection should not stand in the name of a deceased person and the plaintiff, who claims to be the legal heir of the deceased Loganatha Mudali, has not taken any action till date to transfer the service connection in her name.

3. On the above pleadings the trial Court framed four issues. Plaintiff examined two witnesses and marked nine documents on her side and the defendants examined one witness and marked seven documents on their side. Upon consideration of the evidence placed before it, the Trial Court came to the conclusion that the defendants cannot recover the dues under the Revenue Recovery Act as the demand is barred by limitation and consequently dismissed the suit.

4. The aggrieved defendants/Electricity Board filed A.S.No.18 of 1990 on the file of Sub Court, Tiruvallur. The learned Subordinate Judge, after reassessing the materials on record and after hearing the learned counsel on either side, allowed the appeal and directed the plaintiff to pay the due amount of Rs.4,965.50 to the Board within a period of one month.

5. The plaintiff not satisfied with the reversal of the findings by the lower appellate Court, preferred the present second appeal. While admitting the second appeal, the following substantial questions of law were framed,

> (1) Whether the first appellate Court failed to note that the claim of the respondents is barred by limitation?
>
> (2) Whether the first appellate Court failed to note that Act 29 of 1978 was prospective in its operation and hence the provisions of the Revenue Recovery Act could not be applied to the alleged dues which had accrued prior to the coming into force of the said Act ?"

6. The learned counsel appearing for the appellant/plaintiff argued that the first appellate Court erroneously set aside the judgment of the Trial Court, particularly without noticing that the amount due was barred by limitation and that the Electricity Board is not entitled to issue the notice of demand as the Tamil Nadu Electricity Board

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(Recovery of Dues) Act, 1978 (Act 29 of 1978) has no retrospective effect.

7. The learned counsel appearing for the respondents/Tamil Nadu Electricity Board argued that the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978 was enacted for the purpose of recovering the dues and it nowhere mentions that it is only prospective in operation and hence the notice issued for payment of dues is in no way violative of the Act and therefore the judgment of the first appellate Court is sustainable and that of the Trial Court is unsustainable. The learned counsel also cited a judgment of this Court reported in 1997 (III) CTC 527 (Asmath Begum v. Tamil Nadu Electricity Board, Mattur and others) and contended that under Section 24 of the Indian Electricity Act, the word "due" is to mean all monies, owed and payable even though their recovery may be barred by law of limitation and the amount indisputably payable could not be avoided to be paid or could not be prevented from being recovered by the Board having recourse to section 24 of the Act by the Electricity Board and therefore the Board is fully justified in issuing the notice and consequently prayed for dismissal of the suit.

8. I have considered the rival submissions made by the respective counsels. As found by the first appellate Court, the Tamil Nadu Act 29 of 1978 cannot be held to be prospective in effect. The notice issued for recovery of the dues prior to 1970 under the said Act is as per Section 6(1) of the Act, which reads as follows,

> "If the aggregate amount of the various dues, penalty and costs mentioned in the notice of demand served under section 4 is not deposited with the prescribed authority within three months of the date of such service or such extended period as the Chairman of the Board may from time to time allow, the debtor shall be deemed to be in default in respect of such amount and the same shall without prejudice to any other mode of recovery, be recoverable as an arrear of land revenue notwithstanding anything to the contrary contained in any other law or instrument or agreement."

It is further noted that the aggregate amount of various dues, penalty, costs, thereby mean any sum payable to the Board on account of consumption of the Electricity energy supplied. As per Section 6(2) of the Act, the dues can be recovered as arrears of land revenue under the Tamil Nadu Recovery Act, 1864 (Tamil Nadu Act II of 1864) by the prescribed authority.

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9. In so far as the limitation point is concerned, it is to be noted that the demand from December, 1962 to June, 1964 comes to Rs.1,386/- and the penalty payable upto July, 1984 is Rs.3,579.50. The said amounts were directed to be paid within three months as per the notice dated 28.2.1985. The notice having been issued on 28.2.1985 giving three months time will be available till three years after the expiry of three months from 28.2.1985. The present suit is filed on 27.3.1986 and the demand having been made after the constitution of Tamil Nadu Electricity Board on 1.7.1957, the demand made is perfectly legal. The plaintiff instead of paying the dues as demanded, approached the Civil Court. Therefore the demand is not beyond the period of limitation as contended by the appellant herein/plaintiff. The demand of Rs.1,386/- for the actual dues and the penalty imposed subsequently for non-payment of the said dues to the tune of Rs.3,579.50, totalling Rs.4,965.50 is also valid in view of BP No.780, wherein it is clearly stated that the Board is empowered to demand the dues payable for the old service connection along with the bill payable for the existing service connection and if the same is not paid, the Board is empowered to disconnect the existing service connection. That being the position, no injunction can be granted contrary to the said Board Proceedings.

10. The Judgment cited by the learned counsel for the Electricity Board reported in 1997 (III) CTC 527 (cited supra) clearly supports the stand of the Board, wherein it is clearly held that it is not open to the plaintiff to seek for permanent injunction restraining the Electricity Board from recovering the dues by having recourse to penal and coercive action of the nature envisaged under section 24 of the Act and injunction cannot be granted to operate or run against the specific mandate of the statute. Thus the trial Court committed a grave error in decreeing the suit as prayed for, thereby preventing the Electricity Board from invoking the statutory provision conferring a specific right upon the Board and its servants.

11. In view of the conclusion arrived at as stated supra, the judgment of the first appellate Court dated 31.12.1992 is hereby sustained and that of the Trial Court dated 29.11.1989 is set aside. The second appeal is dismissed. No costs.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. The Subordinate Judge, Tiruvallur

2. The District Munsif, Tiruvallur

+ 1 cc to Mr. M. Vaidyanathan, Advocate SR No.2343

MM(CO)
SR/6.3.2006

Judgment in
S.A.No.490 of 1993

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